

BOARD OF APPEALS CASE NO. 5300

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BEFORE THE

APPLICANT: Howard & Alma McComas

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ZONING HEARING EXAMINER

REQUEST: Variance to allow an accessory structure to exceed 50% of the square footage of the principal structure; 1224 Abingdon Road, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/16/02 & 10/23/02

HEARING DATE: December 16, 2002

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Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Howard K. McComas III and Alma V. McComas, are requesting a variance, pursuant to Section 267-26C(1) of the Harford County Code, to allow an accessory structure to exceed 50% of the square footage of habitable space of the principal structure in the R2 District.

The subject parcel is located at 1224 Abingdon Road, Abingdon, Maryland 21009 and is more particularly identified on Tax Map 62, Grid 3C, Parcel 549. The parcel consists of 3.491 acres, is zoned R2/Urban Residential and is entirely within the First Election District.

Mr. Howard K. McComas III appeared and testified that he proposes to build a barnlike storage building that will be 80 feet by 45 feet in dimension (3600 square feet). The existing home is 5500 square feet. The building will be metal with a green roof and will be used to store farm equipment, mowers, snowplows, 2 Chevy Suburban automobiles, patio furniture, several golf carts, equipment trailers, log splitters, antique car and children's' clothing. At the present time some of this is stored in trailers and some is stored outside. Without a storage building it is difficult to keep things organized, according to the witness. Additionally, Mr. McComas is concerned about security. When asked if a smaller sized building would work, the witness stated that he has too much equipment and other things for a smaller building. Security is of particular concern to the witness since small single family homes are planned for construction on land to the rear of his property.

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The witness pointed out that he is acquiring 5 additional acres of land to the southwest of his property and also owns 1.5 acres west of the subject parcel. The current parcel is irregularly shaped and is wooded to the rear. The parcel slopes to a wetland area near the site of the proposed structure. Based on these factors the witness felt that the proposed site was the most appropriate location for the structure. Mr. McComas did not believe that any adverse impact would result from construction of the metal storage building.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. The Department, in recommending approval, stated: “Although the property is in a residential district, it is unique in that it is a large, irregularly shaped parcel, is screened from adjacent properties by existing vegetation, and is configured in such a way as to allow such a structure without creating adverse impacts to adjacent properties.” Mr. McClune added that with the addition of the other parcels, the total land ownership of the Applicant will be 8.5 acres, substantially larger than other R2 and consequently, able to support larger buildings than would normally be associated with R2 properties found elsewhere within Harford County. Because of the size of the lot and the slope of the land, the proposed building will not be seen from adjacent properties of public roads. By referring to Attachment 6B, both McClune and McComas pointed out to the Hearing Examiner other large buildings located in the immediate vicinity of the subject parcel. Mr. McClune stated that the Department would rather see a large structure placed here than have all of this equipment stored outside.

There were no persons that appeared in opposition to the subject request.

CONCLUSION:

The Applicants, Howard K. McComas III and Alma V. McComas, are requesting a variance, pursuant of Section 267-26C(1) of the Harford County Code, to allow an accessory structure to exceed 50% of the square footage of habitable space of the principal structure in the R2 District.

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Harford County Code Section 267-26C(1) provides:

“Accessory uses and structures.

C. Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of § 267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1.”**

Harford County Code Section 267-11 permits variances and provides:

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

- 1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.**

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2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

The guidance provided by the Cromwell Court mirrors, in part, the requirements of Section 267-11 of the Harford County Code. The first inquiry is a determination that the property is unique or unusual in a manner different from the nature of surrounding properties. There was substantial evidence presented by both the Applicant and the Department that this property was unique because of its size, existing forestation and slopes present on the parcel that all combine to screen from view of adjacent properties the proposed building. However, the Applicant failed to show that this "uniqueness" "...causes the zoning provisions to impact disproportionately upon the property.". The unique characteristics of this parcel have absolutely nothing whatever to do with the zoning request at hand. The request is to allow an accessory building that is larger than 50% of the existing principal dwelling. The reason this very large building is required by the Applicant is that he has acquired a lot of things, some very large, that require storage. A smaller building will not do, according to the witness, because he has too much to store – Chevy trucks, snowplows, farm equipment, clothing, toys, patio furniture, several golf carts, log splitters, etc. The topography of the land has no impact at all on the need for a large building. If the mere quantity of materials needed to be stored were the criteria for erection of large buildings that exceed 50% in size of the principal dwelling, than there would be no need for such a zoning restriction as nearly every homeowner could potentially claim hardship simply because he/she had accumulated more things than can possibly fit in a building of allowable size.

The Hearing Examiner also agrees that this particular property is larger than most R2 properties found in Harford County and the slope of the land coupled with the size of the lot and existing forestation will operate to reduce adverse impacts that may result from such a large building. The size of this parcel, coupled with the two additional parcels clearly indicate to the Hearing Examiner that the parcel as a whole, could accommodate this proposed building without adverse impacts to adjacent properties.

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Nonetheless, the Applicants, having failed to establish unique characteristics that cause the Zoning Code restriction to disproportionately impact the subject parcel, the question of whether adverse impacts result from approval is irrelevant to the inquiry.

The subject parcel is in an R2 zone and the legislative body has limited the size of accessory buildings to no more than 50% of the square footage of the principal residence unless allowed to be larger by grant of a variance. The legislative body has further determined that no variance shall be granted unless the uniqueness of the property itself would result in practical difficulty or unreasonable hardship. As pointed out above, that is not the case here. The reason a larger building than allowed is requested is simply to accommodate the storage needs of the Applicant, a situation of his/her own making and not one that results from topographical features of the parcel itself. In the opinion of the Hearing Examiner, the Applicant has failed to meet the burden of proof required pursuant to Cromwell and the provisions of Section 267-11 of the Harford County Code. Moreover, the rule set forth in Section 267-26C(1) is intended to apply to all properties in the R2 zone, protecting those properties from the erection of large storage buildings not generally compatible with uses associated with the R2 zone. This proposal is for a substantial structure that is more like an agricultural or commercial building rather than a garage-like structure contemplated by the Code and consistent with uses commonly found in the R2 zone. In addition to failing the test of uniqueness, the Hearing Examiner also finds that this request, if allowed, would materially impair the purpose of the Zoning Code.

For the foregoing reasons, the Hearing Examiner recommends denial of the request.

Date DECEMBER 30, 2002

William F. Casey
Zoning Hearing Examiner